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SUBJECT: ARMENIA'S CONSTITUTIONAL COURT APPROVES TURKEY-ARMENIA
PROTOCOLS

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SUMMARY

¶1. (SBU) On January 12 Armenia's Constitutional Court ruled that the provisions of the Armenian-Turkish protocols on establishing diplomatic relations and developing bilateral relations are in compliance with the Armenian constitution. Addressing criticisms from opponents of the protocols, the Court stated that the protocols did not contradict Armenia's constitutional imperative to seek international recognition of the Armenian "genocide." The Court also stressed that the development of bilateral relations would involve further specific agreements, and that these agreements would themselves be subject to the same ratification requirements as the protocols. Some nationalists who oppose the protocols see this statement as a silver lining, interpreting it to mean that Armenia has not legally accepted the current border with Turkey. END
SUMMARY.

COURT'S QUICK, RESTRICTIVE REVIEW OF PROTOCOLS

¶2. (U) On January 12, Armenia's Constitutional Court (its counterpart to the U.S. Supreme Court) reviewed a request by President Serzh Sargsian to ascertain whether the provisions of the Armenian-Turkish protocols on establishing diplomatic relations and developing bilateral relations (signed October 10, 2009, in Zurich) complied with the requirements of the Armenian constitution.

¶3. (U) The Court restricted the format of the session, allowing the media access for only four minutes, which Gagik Harutiunian, the Court's chairman, used to announce that the court's nine judges would consider only written statements submitted by the Armenian Foreign Ministry and other interested parties. The chosen format excluded public hearings or questioning of government officials and experts. Explaining the review, Harutiunian declared that "all (of) those written documents that have been submitted to the Constitutional Court are available in the deliberations room and the members of the court can take them into account." Harutiunian noted that the Court would also consider the nine-page-long petition submitted by the nationalist Dashnakstutun party and other opponents of the protocols.

FEEBLE PROTEST OUTSIDE THE COURT

¶4. (SBU) Throughout the day, dozens of Dasnhaks, members of 14 other

political parties (including the opposition Heritage party), and NGOs that oppose the protocols gathered outside the Court to protest the widely anticipated positive ruling of the Court. News reports indicated that diaspora members of the Dashnaktsutiun party also participated in the small protest, coming from as far away as the United States.

RULING SEEKS TO PREEMPT DOMESTIC OPPOSITION?

15. (SBU) In its ruling, the Court made a number of statements that appear intended, at least in part, to counter criticisms of the protocols, criticisms that have been made most forcefully by the nationalist opposition and by many in the Armenian diaspora. Specifically, the Court stated in its ruling that:

-- The protocols "cannot be interpreted or applied in a way that may contradict" provisions of Armenia's Constitution and Independence Declaration that dedicate the state to seeking international recognition of the Armenian "genocide." This statement appears to serve three purposes: to imply that the protocols themselves do not contradict Armenia's position on the "genocide;" to reassure the public that any future action taken under the protocols will not create such a contradiction; and to give Armenian negotiators an explicit constitutional mandate they can cite to Turkey as limiting room for Armenian compromise on historical issues.

-- The protocols impose no obligation on Armenia regarding its relations with any third country (i.e., Azerbaijan), and no third country can use the protocols to impose demands on Armenia.

-- The protocols' preamble language, "confirming," "considering," "guided by," etc., does not impose binding obligations on Armenia,

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and no other obligations could come into force until the two main obligations under the protocols, establishment of diplomatic relations and opening the border, have been fulfilled. For Armenians, the most sensitive among these clauses in the protocols' preamble may be the one saying: "Confirming the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law;"

-- The protocols focus mainly on creating the conditions for further development of relations, and this further development will require additional specific agreements, all of which will be subject to the Armenian constitution and the same ratification process that the protocols themselves are going through now.

-- The commitment to open the border "refers to Armenia's readiness of addressing legal, organizational and infrastructure issues related to ensuring ongoing operation of border checkpoints." This statement may also be intended to avoid explicit recognition of the current border. Additionally, it may have been included to make Armenia's point that Turkey, not Armenia, closed the border, and that therefore in a legal sense action by Turkey alone would be sufficient to reopen it.[If we wanted to shorten, we might take this sub-para out.]

16. (SBU) A Dashnak leader told us that he sees the requirement for ratification of any more specific agreements as a plus, despite his overall wish that the Court had shot down the protocols, because he interprets it to mean that the Court is not treating the protocols as acceptance of the current Turkey-Armenia border.

ON TO RATIFICATION? NOT UNTIL TURKEY RATIFIES

17. (U) The Court's ruling legally paved the way for the ratification of the protocols by Armenia's National Assembly (parliament). The parliament's ratification, however, is not a given. In December, 2009, Hovik Abrahamian, the Speaker of the National Assembly, stated that Armenia would ratify the protocols only after Turkey's

parliament ratified them. Eduard Sharmazanov, spokesman for President Sargsian's ruling Republican Party of Armenia, who attended the Court's review, insisted that "the Turkish side must be the first to ratify them (the protocols) because it's the Turkish side that has always talked in the language of preconditions and ultimatums." Armen Rustamian, a Dashnak leader who has led most of the Dashnak protests of the protocols, expressed hope after the ruling that President Sargsian will now add "reservations" to the Court's decision before he presents it to the National Assembly.

COMMENT

18. (SBU) Given the interpretations in the Court's ruling, we think it unlikely that President Sargsian will see a need to attach reservations to the protocols when he submits them to the National Assembly. He will probably judge that this ruling has sufficiently answered his domestic critics, and thus equipped him with the maneuvering room he deems necessary to proceed with eventual ratification. Judging by the feeble showing of the Dashnaks, however, the forceful remarks of the ruling party spokesperson, and President Sargsian's control of the judicial and legislative branches, the last real hurdle for ratification -- at least from the Armenian political establishment's perspective -- lies in the Turkish parliament.

PENNINGTON